

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an application for mandates in the matter of *Writ of Mandamus and Certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**C.A. (Writ) Application
No: 0447/2022**

1. Maddumapatabadige Gayani,
of No. 135, Labeema, Kadurupokuna
Road, Tangalle.

Petitioner

Vs

1. Urban Development Authority,
6th and 7th Floors,
“Sethsiripaya”,
Battaramulla.
2. Nimesh Herath
Chairman,
Urban Development Authority,
6th and 7th Floors,
“Sethsiripaya”,
Battaramulla
3. Assistant Director,
District Office of Hambanthota,
Magam Ruhunupura Administration
Complex, Hambanthota.
4. Tangalle Pradeshiya Sabha,
Netolpitiya, Tangalle
5. Lalitha R. Wanigasekera,
Chairman
Tangalle Pradeshiya Saba,
Netolpitiya, Tangalle.

6. K.P. Vimalasilee,
“Varna” Mahawela Road,
Pallikudawa, Tangalle

Before : R. Gurusinghe, J. (Acting/PCA)
&
Dr. S. Premachandra J.

Counsel : Dr. Sunil Cooray with B. Gamage
for the Petitioner

Abigail Jayakody, SC, with Dinithi Wijesekara
for the 1st to 3rd Respondents

Suren Gnanaraj instructed by
S.W. Amila Kumara
for the 4th and 5th Respondents

J.M. Wijebandara with Dimithiri Pandiwita
for the 6th Respondent

Argued on : 20-02-2026

Decided on: 15-05-2026

JUDGMENT

R. Gurusinghe, J.

The petitioner filed this Writ application seeking *inter alia* the following reliefs;

- B. Issue an order in the nature of a Writ of Mandamus to compel and command the 1st to 3rd Respondents to carry out the statutory/public duty cast upon them under Section 28A of the Urban Development Authority Act No. 41 of 1978 as amended by taking all necessary steps to demolish the unauthorized construction effected by the 6th Respondent and/or to stay and/or prevent the continuation of the said unlawful constructing in western boundary of the land and the premises described in the schedule below.

- C. Issue an order in the nature of a Writ of mandamus to compel and command the 4th Respondent and 5th Respondent to carry out the statutory/public duty cast on them under Section 28A of the UDA act as delegated under Section 23 (5) by taking all necessary steps to demolish the unauthorized construction effected by the 6th Respondent on the western boundary of the premises described in the schedule below.

The petitioner is the owner of the land adjoining that of the 6th respondent. The petitioner states that the 6th respondent was constructing a building without obtaining the requisite approvals from the relevant authorities, namely the 1st to 3rd respondents and/or the 4th respondent. The Petitioner also states that the said construction was being carried out at a distance of less than 7 ½ feet from the western boundary of the petitioner's land.

The 1st – 3rd respondents filed their objections to the petitioner's application and sought the dismissal of the petitioner's application.

The 6th respondent also filed objections and tendered documents marked 6R1 to 6R7 in support of her position.

The 1st - 3rd respondents stated that the 6th respondent submitted a building application on 19-10-2022, a copy of which is produced marked 1R1. Accordingly, officials of the 1st respondent inspected the construction site and reported certain deficiencies, whereupon the 6th respondent was directed to rectify them. Thereafter, by letter dated 17-11-2022, the Urban Development Authority (UDA) informed the 6th respondent that the construction did not comply with the UDA regulations and directed the 6th respondent to take necessary steps to regularize the same. A copy of the said letter is marked 1R3.

The 6th respondent submitted a further letter seeking approval on 24-02-2023, a copy of which is produced marked 1R4. Accordingly, the District Planning Committee authorized its members to conduct a site inspection and submit a report back to the committee. A copy of the Planning Committee report is produced, marked 1R5. Accordingly, the 6th respondent was directed to carry out certain rectifications. There had been further correspondence between the 6th respondent and the UDA in relation to the said construction.

By a letter dated 20-03-2024, the 6th respondent informed the UDA that she had rectified the previously identified shortcomings and sought approval for the construction. A copy of the said letter is produced marked 1R7. Thereafter, another site inspection was carried out on 29-03-2024, and the findings of the District Planning Committee were produced marked as 1R8. It was observed that the 6th respondent has rectified all the shortcomings, except that the distance between the boundary and the rear side of the building remained less than 7½ feet. However, it was further observed that sufficient space has been left on the left side of the building. Consequently, on 01-04-2024, the UDA granted approval to the building plan subject to two conditions, and the same was communicated to the 6th respondent by a letter dated 05-04-2024. Copies of the said letters are produced, marked 1R9 and 1R10.

The 1st respondent also tendered a copy of the approved plan, marked X1, together with the receipt for the money deposited by the 6th respondent, as directed to her by letter dated 05-04-2024, marked X2. Further, a copy of the license issued to the 6th respondent by the Road Development Authority, in terms of Section 42 of the Thoroughfares Act No. 40 of 2008, is produced and marked X3. It was further stated that the 2 two conditions set out in document 1R10 were duly complied with, by the 6th respondent.

Section 28A of the UDA Act is as follows:

(1) Where in a development area, any development activity is commenced continued, resumed or completed without permit or contrary to any term or condition set out in a permit issued in respect of such development activity, the Authority may, in addition to any other remedy available to the Authority under this Law, by written notice require the person who is executing or has executed such development activity, or has caused it to be executed, on or before such day as shall be specified in such notice, not being less than seven days from the date thereof

(a) to cease such development activity forthwith; or

(b) to restore the land on which such development activity is being executed or has been executed, to its original condition; or

(c) to secure compliance with the permit under the authority of which that development activity is carried out or engaged in, or with any term or condition of such permit, and for the purposes of compliance with the requirements aforesaid

(i) to discontinue the use of any or building; or

(ii) to demolish or alter any building or work.

(2) It shall be the duty of the person on whom a notice is issued under subsection (1) (2) It shall be the duty of the person on whom a notice is issued under subsection (1) to comply with any requirement specified in such notice within the time specified in such notice or within, such extended time as may be granted by the Authority on application made in that behalf.

(3)

(a) Where any person has failed to comply with any requirement contained in any written notice issued under subsection (1) within the time specified in the notice or within such extended time as may have been granted by the Authority, the Authority may, by way of petition and affidavit, apply to the Magistrate to make an Order authorizing the Authority to-

(a) to discontinue the use of any land or building;

(b) to demolish or alter any building or work ;

(c) to do all such other acts as such person was required to do by such notice, as the case may be,

and the Magistrate shall after serving notice on the person who had failed to comply with the requirements of the Authority under subsection (1), if he is satisfied to the same effect, make order accordingly.

(b) If such person undertakes to discontinue the use of the land or building or to demolish or alter the building or work, or to do such other acts as are referred to in paragraph (a) of subsection 3 of section 28A, the Magistrate may, if he thinks fit, postpone the operation of the Order for such time not exceeding two months as he thinks sufficient for the purpose of giving such person an opportunity of complying with such requirement.";

(4) Where a mandatory order has been made under subsection (3), it shall be the duty of the police authorities to render all necessary assistance to the Authority in carrying out the order.

(5) The Authority shall be entitled to recover any reasonable expenses incurred by the Authority in demolishing or altering any building or work in pursuance of an order made by the Magistrate under subsection (3).

(6) The preceding provisions of this section shall not affect any liability incurred by such person by reason of his failure to comply with such notice.

Accordingly, the UDA is vested with the power to take necessary action where development activities have been carried out without a valid permit, including the power to issue appropriate directions to the person engaged in development activity. In the present case, the 6th respondent has duly complied with the directions issued by the UDA. Accordingly, the UDA has approved the 6th respondent's building plan. In such circumstances, the construction carried out by the 6th respondent cannot be considered an unauthorized development activity. The UDA has approved the plan after site inspections and upon the issuance of necessary directions to the 6th respondent. Thus, there is no duty arising on the part of the 1st to 5th respondents to demolish the construction of the 6th respondent.

In Samaraweera v. Balasuriya 58 NLR 118, Sansoni, J. held, *“It is trite law that Mandamus is only available to compel the doing of a duty not done, and not on the ground that a duty had been done erroneously. The cases cited by the respondent’s counsel establish this proposition.”*

In Dehideniya Anura Kumarasinghe vs The Secretary to the Ministry of Health and others C. A. (Writ) Application 412/2014 decided on 31.07.2019 Justice Janak de Silva stated that,

“ A writ of mandamus will be issued only if there is a public or statutory duty. [De Alwis v. De Silva (71 N.L.R. 108); Weligama Multi-Purpose Cooperative Society Ltd. v. Chandradasa Daluwatta (1984) 1 Sri. L.R. 195; Hakmana Multi-Purpose Cooperative Society Ltd. v. Ferdinando (1985) 2 Sri. L.R. 272; Piyasiri v. People's Bank (1989) 2 Sri. L.R. 47; Sannasgala v. University at Kelaniya (1991) 2 Sri.L.R. 193 and Samaraweera v. Minister of Public Administration (2003) 3 Sri. L.R. 64]. Hohfeld¹ argued that there needs to be an understanding of the true nature of legal conceptions and relations to obviate the difficulties posed by artificial dichotomies and constructs. He pointed out that "right", "duty", "liberty" and "no-right" are connected in a fundamental way with each other. The existence of one brings about the existence of the other.

Hofeld identified only jural correlatives and opposites whereas Glanville Williams identified a third set of jural relations which he referred to as jural contradictories. In this situation, the presence of one conception in one party means the absence of the contradictory in the other party. As S.N. Silva C.J. held (at page 15) in Urban Development Authority v. Abeyratne and Others [(S.C. Appeal nos. 85/2008 & 101/2008; S.C.M. 01.06.2009): "Hence, stated in the form of a jural correlative, mandamus would lie when a statutory duty is cast upon a public authority with a correlative right to demand its discharge."

It is settled law that for a writ of mandamus to be issued, the public authority concerned must be under a legal or public duty to perform the act sought to be compelled by the petitioner, and, correspondingly, the petitioner must establish a legal right to the performance of such duty.

In the above circumstances, the petitioner has failed to establish any legal right to compel the 1st to 5th respondents to demolish the construction carried out by the 6th respondent. Similarly, there is no legal or public duty on the 1st to 5th respondents to undertake such demolition. Thus, the 1st to 5th respondents have not failed to perform any public duty.

For the reasons enumerated above, the application of the petitioner is dismissed.

Judge of the Court of Appeal
(Acting/PCA)

Dr. S. Premachandra J.
I agree.

Judge of the Court of Appeal.